

**Application No.: 10/621,440**

**REMARKS**

Claims 1-6 and 8-10 stand rejected under 35 U.S.C. § 101 as statutory double-patenting over USP No. 6,658,560. It is respectfully submitted that the enclosed amendment obviates the alleged double-patenting. Accordingly, it is respectfully requested that this rejection be withdrawn.

Claim 7 stands rejected under obviousness-type double patenting over claim 7 of USP No. 6,658,560 in that claim 7 of USP No. 6,658,560 allegedly anticipates claim 7 of the present application. It is respectfully submitted that the enclosed amendment obviates the alleged anticipation and hence the asserted double-patenting. Accordingly, it is respectfully requested that this rejection be withdrawn.

Claims 1, 7 and 9 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. It is respectfully submitted that the enclosed amendment obviates the alleged non-statutory subject matter. Moreover, it is respectfully submitted that the Examiner's reliance on "newly provided internal guidelines" as a basis for expanding § 101 to the claims of the present application is improper. As set forth in the MPEP and established case law, the rejected claims satisfy the requirements of § 101 (e.g., claim 7 satisfies at least the "machine" requirement of § 101 in reciting an "execution unit"). It should be noted that the law establishes the standards for interpreting 35 U.S.C. § 101, not "newly provided internal guidelines" of which Applicants have no knowledge. In this regard, the Examiner is reminded that the USPTO can not make/alter law by adding requirements to the well-known and established standards of 35 U.S.C. § 101. If the Examiner maintains the pending rejection, it is respectfully requested that

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he point to the statute or case law that establishes the new, additional standard which the Examiner alleges 35 U.S.C. § 101 now requires.

In any event, as mentioned above, it is respectfully submitted that the enclosed amendment obviates the alleged non-statutory subject matter. Accordingly, it is respectfully requested that this rejection be withdrawn.

Claim 7 is the sole independent claim and stands rejected under 35 U.S.C. § 102 as being anticipated by Robertazzi et al. '989 ("Robertazzi"). This rejection is respectfully traversed for the following reasons.

Claim 7 recites in pertinent part, "instruction parallelizing/executing means for executing the two instructions ... *in parallel* by allocating one of the two instructions to the second execution unit" (emphasis added). The Examiner's reliance on Robertazzi is not understood. Robertazzi discloses only a multi-processor system and is completely silent as to executing two instructions in parallel. The Examiner appears to interpret the amount of load (identified as reference numerals 607 and 609) allocated to the processors as an instruction. However, the reference numerals 607 and 609 merely represent the processing *time* blocks during which a processor is processing the load. Accordingly, the overlap illustrated in Figure 6 of Robertazzi, which the Examiner appears to rely on as evidencing parallel processing of the load 609 and 607, does not suggest that alleged instructions are processed in parallel. Indeed, the overlap merely evidences that load in the various processors are being processed concurrently, but is completely silent as to which instructions are being processed at which times. In fact, as reference 609 represents a *subsequent* time period relative to 607, the reallocation of the load to be processed

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during the time period defined by 609 would appear to be processed by one of the other processors *serially* relative to the load processed during time period 607 rather than in *parallel*.

In addition, Robertazzi does not appear to disclose or suggest “wherein the parallelizing/executing means is capable of *changing* one of the two instructions to another instruction that designates the second execution unit” (emphasis added).

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed, either expressly or inherently (noting that “inherency may not be established by probabilities or possibilities”, *Scaltech Inc. v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999)), in a single prior art reference, *Akzo N.V. v. U.S. Int’l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the forgoing, it is submitted that Robertazzi does not anticipate claim 7, nor claim 8 dependent thereon.

Claim 7 also stands rejected under 35 U.S.C. § 103 as being unpatentable over Thusoo et al. ‘826 (“Thusoo”) in view of Schroter ‘133 (“Schroter”). This rejection is respectfully traversed for the following reasons.

It is respectfully submitted that even assuming *arguendo* proper, the proposed combination does not disclose or suggest the claimed combination. Claim 7 recites in pertinent part, “instruction parallelizing/executing means for executing the two instructions, *which designate the first execution unit as a target*, in parallel by allocating one of the two instructions to the second execution unit” (emphasis added). The Examiner admits that Thusoo does not disclose instructions that designate execution units (instructions designate destinations instead) and therefore relies on Schroter to modify Thusoo so that an instruction will designate an execution unit. However, Schroter, at best, merely discloses an instruction which designates an

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execution unit. Schroter does not suggest *two* instructions which designate a given execution unit as a target. Accordingly, even assuming *arguendo* proper, the proposed combination would at best suggest, absent improper hindsight reasoning using Applicants' specification, having each instruction designate a different execution unit specified in the respective instruction, rather than instructions which designate a given execution unit as a target.

In addition, neither Thusoo nor Schroter, alone or in combination, appear to disclose or suggest "wherein the parallelizing/executing means is capable of *changing* one of the two instructions to another instruction that designates the second execution unit" (emphasis added).

The Examiner is directed to MPEP § 2143.03 under the section entitled "All Claim Limitations Must Be Taught or Suggested", which sets forth the applicable standard for establishing obviousness under § 103:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. (citing *In re Royka*, 180 USPQ 580 (CCPA 1974)).

In the instant case, the pending rejection does not "establish *prima facie* obviousness of [the] claimed invention" as recited in claim 7 because the proposed combination fails the "all the claim limitations" standard required under § 103.

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplicatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as claim 7 is patentable for the reasons set forth above, it is respectfully submitted that claim 8 dependent thereon is also patentable. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

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Based on the foregoing, it is respectfully submitted that all pending claims are patentable over the cited prior art. Accordingly, it is respectfully requested that the rejections under 35 U.S.C. § 102/103 be withdrawn.

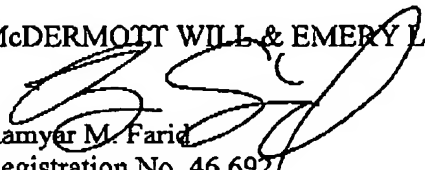
**CONCLUSION**

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

  
Ramyar M. Farid  
Registration No. 46,692

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
Phone: 202.756.8000 RMF:MWE  
Facsimile: 202.756.8087  
Date: May 8, 2006

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as our correspondence address.**